

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

HIEU TRUONG,

Plaintiff,

vs.

CHER YAO CHEN, M.D., of
Oregon State Hospital,

Defendants.

No. 03:10-cv-00558-HU

**SUPPLEMENTAL
FINDINGS & RECOMMENDATION
ON MOTION FOR SUMMARY JUDGMENT**

Hieu Truong
Sid # 11999198
Snake River Correctional Institution
777 Stanton Boulevard
Ontario, OR 97914

Plaintiff appearing *pro se*

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Attorney General
Justin Emerson Kidd
Assistant Attorney General
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1162 Court Street N.E.
Salem, OR 97301-4096

Attorneys for Defendant

1 HUBEL, M.J.:

2 On January 6, 2012, the undersigned issued Findings and
3 Recommendation on the defendant doctor's motion for summary
4 judgment, recommending the motion be granted. In the order, I
5 found the plaintiff Hieu Truong had failed to show the defendant
6 was deliberately indifferent to his serious medical needs following
7 an incident when a tree limb fell on Truong, causing him to suffer
8 chronic headaches. I found that based on Truong's evidence in this
9 case, no reasonable jury could render a verdict in his favor. See
10 Dkt. #42.

11 On March 8, 2012, the Honorable Anna J. Brown, District Judge,
12 adopted my Findings and Recommendation, overruling Truong's
13 objections thereto, and judgment was entered for the defendant.
14 Dkt. ##55 & 56.

15 Later the same day, the court received correspondence from
16 Truong, enclosing copies of handwritten notes, an Inmate Communi-
17 cation form, and some medical records. Dkt. #59. Judge Brown
18 asked the undersigned to review Truong's submission and *sua sponte*
19 consider whether any change was warranted "in the Court's
20 dispositive analysis that previously resulted in dismissal of this
21 matter." Dkt. #58.

22 I have reviewed all of the materials submitted by Truong, and
23 nothing he has submitted, including the new medical records,
24 changes my previous finding that Truong has failed to show the
25 defendant was deliberately indifferent to his serious medical need.
26 The medical records do show that Truong suffers from vertigo and
27 headaches, for which he is being treated with medication and
28 exercises. Although it is possible, as Truong alleges, that these

1 conditions either began at the time the tree limb fell on his head,
2 or exacerbated his already-existing headaches, that still does not
3 show the defendant was negligent or acted with deliberate
4 indifference in his treatment of Truong following the accident.
5 The record still contains no evidence from which a jury reasonably
6 could render a verdict in Truong's favor.

7 Accordingly, I recommend the previous ruling stand, and the
8 judgment in the defendant's favor not be overturned or disturbed.

9
10 ***SCHEDULING ORDER***

11 These Findings and Recommendations will be referred to Judge
12 Brown for consideration. Objections, if any, are due by **April 16,**
13 **2012.** If no objections are filed, then the Findings and
14 Recommendations will go under advisement on that date. If
15 objections are filed, then any response is due by **May 3, 2012.** By
16 the earlier of the response due date or the date a response is
17 filed, the Findings and Recommendations will go under advisement.

18 IT IS SO ORDERED.

19 Dated this __27th__ day of March 2012.

20
21 /s/ Dennis J. Hubel

22 _____
23 Dennis James Hubel
24 Unites States Magistrate Judge
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